

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
TULARE IRRIGATION DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION

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6 AND  
7 TULARE IRRIGATION DISTRICT  
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9 FROM FRIANT DIVISION

10 THIS CONTRACT, made this 20<sup>th</sup> day of January, 2001, in pursuance generally  
11 of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but  
12 not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939  
13 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68),  
14 October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of  
15 the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal  
16 Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United  
17 States, and TULARE IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a public agency  
18 of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal  
19 place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley Project,  
23 California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation,

24 municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and  
25 distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the  
26 Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

27 [2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake)  
28 and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division facilities,  
29 which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract;  
30 and

31 [3<sup>rd</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the United  
32 States has acquired water rights and other rights to the flows of the San Joaquin River, including without  
33 limitation the permits issued as the result of Decision 935 by the California State Water Resource Control  
34 Board and the contracts described in subdivision (n) of Article 3 of this Contract, pursuant to which the  
35 Contracting Officer develops, diverts, stores and delivers Project Water stored or flowing through Millerton  
36 Lake in accordance with State and Federal law for the benefit of Project Contractors in the Friant Division;  
37 and

38 [3.1] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project Water  
39 developed through the exercise of the rights described in the third (3rd) Explanatory Recital of this Contract;  
40 and

41 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. I75r-2485, as  
42 amended, which established terms for the delivery to the Contractor of Project Water from the Friant  
43 Division from October 18, 1950, to February 28, 1991; and

44 [5<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Renewal Contract  
45 No. I75r-2485R, which provided for continued water service to the Contractor from the Friant Division  
46 from March 1, 1991, through February 28, 2029, but, in light of the Ninth Circuit Court of Appeals Opinion  
47 in the lawsuit entitled Natural Resources Defense Council, et al. v. Roger Patterson, et al., that contract was  
48 replaced by Interim Renewal Contract No. I75r-2485-IR1, dated July 10, 1998, which provides for  
49 continued water service to the Contractor from the Friant Division from September 14, 1998, through  
50 February 28, 2001; and

51 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim and  
52 existing long-term Project Water service contracts following completion of appropriate environmental  
53 documentation, including a programmatic environmental impact statement (PEIS) pursuant to the National  
54 Environmental Policy Act analyzing the direct and indirect impacts and benefits of implementing the CVPIA  
55 and the potential renewal of all existing contracts for Project Water; and

56 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
57 environmental review necessary to provide for long-term renewal of the Existing Contract; and

58 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing Contract,  
59 pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the State of  
60 California, for water service from the Central Valley Project; and

61 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of its  
62 obligations under the Existing Contract; and

63 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer  
64 that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use  
65 and/or has demonstrated projected future demand for water use such that the Contractor has the capability  
66 and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made  
67 available to it pursuant to this Contract; and

68 [11<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon by urban  
69 and agricultural areas within California for more than fifty (50) years, and is considered by the Contractor as  
70 an essential portion of its water supply; and

71 [12<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project, including the  
72 Contractor's, depend upon the continued availability of water, including water service from the Central  
73 Valley Project; and

74 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships to  
75 pursue measures to improve water supply, water quality, and reliability of the Project for all Project  
76 purposes; and

77 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to provide  
78 for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Central  
79 Valley Project as required by law; to guard reasonably against Project Water shortages; to achieve a  
80 reasonable balance among competing demands for use of Project Water; and to comply with all applicable  
81 environmental statutes, all consistent with the legal obligations of the United States relative to the Central  
82 Valley Project; and

83 [15<sup>th</sup>] Omitted;

84 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize  
85 undependable Class 2 Water in their service areas to, among other things, assist in the management and  
86 alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for  
87 environmental enhancement, including restoration of the San Joaquin River below Friant Dam, minimize  
88 flooding along the San Joaquin River, encourage optimal water management, and maximize the reasonable  
89 and beneficial use of the water; and

90 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to  
91 the Friant Division Project Contractors continuing to carry out the beneficial activities set out in the  
92 Explanatory Recital immediately above; and

93 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this Contract  
94 pursuant to Federal Reclamation law on the terms and conditions set forth below;

95 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it  
96 is hereby mutually agreed by the parties hereto as follows:

97 DEFINITIONS

98 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the  
99 intent of the parties as expressed in this Contract, the term:

100 (a) "Calendar Year" shall mean the period January 1 through December 31, both dates  
101 inclusive;

102 (b) "Charges" shall mean the payments required by Federal Reclamation law in addition

103 to the Rates and Tiered Pricing Components specified in this Contract as determined annually by the  
104 Contracting Officer pursuant to this Contract;

105 (b2) "Class 1 Water" shall mean that supply of water stored in or flowing through  
106 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 11, and 12 of this  
107 Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera Canals as a  
108 dependable water supply during each Year;

109 (b3) "Class 2 Water" shall mean that supply of water which can be made available  
110 subject to the contingencies hereinafter described in Articles 3, 11, and 12 of this Contract for delivery from  
111 Millerton Lake and the Friant-Kern and Madera Canals in addition to the supply of Class 1 Water.  
112 Because of its uncertainty as to availability and time of occurrence, such water will be undependable in  
113 character and will be furnished only if, as, and when it can be made available as determined by the  
114 Contracting Officer;

115 (c) "Condition of Shortage" shall mean a condition respecting the Project during any  
116 Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract Total;

117 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly authorized  
118 representative acting pursuant to this Contract or applicable Reclamation law or regulation;

119 (e) "Contract Total" shall mean the maximum amount of Class 1 Water, plus the  
120 maximum amount of Class 2 Water to which the Contractor is entitled under subdivision (a) of Article 3 of  
121 this Contract;

122 (f) "Contractor's Service Area" shall mean the area to which the Contractor is

123 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,

124 which may be modified from time to time in accordance with Article 35 of this Contract without amendment  
125 of this Contract;

126 (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title XXXIV of  
127 the Act of October 30, 1992 (106 Stat. 4706);

128 (h) “Eligible Lands” shall mean all lands to which Irrigation Water may be delivered in  
129 accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as  
130 amended, hereinafter referred to as RRA;

131 (i) “Excess Lands” shall mean all lands in excess of the limitations contained in Section  
132 204 of the RRA, other than those lands exempt from acreage limitation under Federal Reclamation law;

133 (j) “Full Cost Rate” shall mean that water rate described in Sections 205(a)(3) or  
134 202(3) of the RRA, whichever is applicable;

135 (k) “Ineligible Lands” shall mean all lands to which Irrigation Water may not be  
136 delivered in accordance with Section 204 of the RRA;

137 (l) “Irrigation Full Cost Water Rate” shall have the same meaning as “full cost” as that  
138 term is used in paragraph (3) of Section 202 of the RRA;

139 (m) “Irrigation Water” shall mean water made available from the Project that is used  
140 primarily in the production of agricultural crops or livestock, including domestic use incidental thereto, and  
141 watering of livestock;

142 (n) “Landholder” shall mean a party that directly or indirectly owns or leases nonexempt  
143 land, as provided in 43 CFR 426.2;

144 (n2) "Long Term Historic Average" shall mean the average of the final forecast of Water  
145 Made Available to the Contractor pursuant to this Contract and the contracts referenced in the fourth (4<sup>th</sup>)  
146 and fifth (5<sup>th</sup>) Explanatory Recitals of this Contract;

147 (o) "Municipal and Industrial (M&I) Water" shall mean water made available from the  
148 Project other than Irrigation Water made available to the Contractor. M&I Water shall include water used  
149 for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which  
150 are kept for personal enjoyment or water delivered to land holdings operated in units of less than five (5)  
151 acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of water  
152 delivered to any such landholding is a use described in subdivision (m) of this Article;

153 (p) "M&I Full Cost Water Rate" shall mean the annual rate, which, as determined by  
154 the Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I facilities in  
155 service, including, O&M deficits funded, less payments, over such periods as may be required under  
156 Federal Reclamation law with interest accruing from the dates such costs were first incurred plus the  
157 applicable rate for the O&M of such Project facilities. Interest rates used in the calculation of the M&I Full  
158 Cost Rate shall comply with the Interest Rate methodology contained in Section 202 (3) (B) and (C) of the  
159 RRA;

160 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable care,  
161 control, operation, repair, replacement (other than Capital replacement), and maintenance of Project  
162 facilities;

163 (r) "Operating Non-Federal Entity" shall mean the Friant Water Users Authority,  
164 a Non-Federal entity which has the obligation to operate and maintain all or a portion of the Friant Division  
165 facilities pursuant to an agreement with the United States, and which may have funding obligations with  
166 respect thereto;

167 (s) "Project" shall mean the Central Valley Project owned by the United States and  
168 managed by the Department of the Interior, Bureau of Reclamation;

169 (t) "Project Contractors" shall mean all parties who have water service contracts for  
170 Project Water from the Project with the United States pursuant to Federal Reclamation law;

171 (u) "Project Water" shall mean all water that is developed, diverted, stored, or  
172 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance with the  
173 terms and conditions of water rights acquired pursuant to California law;

174 (v) "Rates" shall mean the payments determined annually by the Contracting Officer in  
175 accordance with the then current applicable water ratesetting policies for the Project, as described in  
176 subdivision (a) of Article 7 of this Contract;

177 (w) Omitted;

178 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed successor, or  
179 an authorized representative acting pursuant to any authority of the Secretary and through any agency of the  
180 Department of the Interior;

181 (y) "Tiered Pricing Component" shall be the incremental amount to be paid for each  
182 acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;



183 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for use  
184 by the Contractor at the point(s) of delivery approved by the Contracting Officer;

185 (aa) "Water Made Available" shall mean the estimated amount of Project Water that can  
186 be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer, pursuant to  
187 subdivision (b) of Article 4 of this Contract;

188 (bb) "Water Scheduled" shall mean Project Water made available to the Contractor for  
189 which times and quantities for delivery have been established by the Contractor and Contracting Officer,  
190 pursuant to subdivision (a) of Article 4 of this Contract; and

191 (cc) "Year" shall mean the period from and including March 1 of each Calendar Year  
192 through the last day of February of the following Calendar Year.

193 TERM OF CONTRACT

194 2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In the  
195 event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall submit  
196 a request for renewal in writing to the Contracting Officer no later than two (2) years prior to the date this  
197 Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to  
198 the Contractor shall be governed by subdivision (b) of this Article, and the renewal of this Contract insofar  
199 as it pertains to the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this  
200 Article.

201 (b) (1) Under terms and conditions of a renewal contract that are mutually  
202 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of

203 contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to Federal  
204 and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the Contractor, shall  
205 be renewed for a period of twenty-five (25) years.

206 (2) The conditions which must be met for this Contract to be renewed are: (i)  
207 the Contractor has prepared a water conservation plan that has been determined by the Contracting Officer  
208 in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria for evaluating  
209 such plans established under Federal law; (ii) the Contractor is implementing an effective water conservation  
210 and efficiency program based on the Contractor's water conservation plan as required by Article 26 of this  
211 Contract; (iii) the Contractor is operating and maintaining all water measuring devices and implementing all  
212 water measurement methods as approved by the Contracting Officer pursuant to Article 6 of this Contract;  
213 (iv) the Contractor has reasonably and beneficially used the Project Water supplies made available to it and,  
214 based on projected demands, is reasonably anticipated and expects fully to utilize for reasonable and  
215 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v) the  
216 Contractor is complying with all terms and conditions of this Contract and all legal obligations of the  
217 Contractor, if any, set forth in an enforceable court order, final judgment and/or settlement relating to  
218 restoration of the San Joaquin River; and (vi) the Contractor has the physical and legal ability to deliver  
219 Project Water.

220 (3) The terms and conditions of the renewal contract described in subdivision  
221 (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent with the parties'  
222 respective legal rights and obligations, and in consideration of all relevant facts and circumstances, as those

223 circumstances exist at the time of renewal, including, without limitation, the Contractor's need for continued  
224 delivery of Project Water; environmental conditions affected by implementation of the Contract to be  
225 renewed, and specifically changes in those conditions that occurred during the life of the Contract to be  
226 renewed; the Secretary's progress toward achieving the purposes of the CVPIA as set out in Section 3402  
227 and in implementing the specific provisions of the CVPIA; and current and anticipated economic  
228 circumstances of the region served by the Contractor.

229 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the  
230 Contractor, shall be renewed for a period of twenty-five (25) years and thereafter shall be renewed for  
231 successive periods of up to forty (40) years each, which periods shall be consistent with the then-existing  
232 Reclamation-wide policy, under terms and conditions mutually agreeable to the parties and consistent with  
233 Federal and State law. The present Reclamation-wide policy, dated March 20, 2000, provides that the  
234 term of such contracts shall be no more than twenty-five (25) years each, subject to a variance to allow a  
235 longer term in appropriate circumstances. The Contractor shall be afforded the opportunity to comment to  
236 the Contracting Officer on the proposed adoption and application of any revised Reclamation-wide policy  
237 applicable to the delivery of Project M&I Water that would affect the term of any subsequent renewal  
238 contract with the Contractor for the furnishing of M&I Water.

239 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized  
240 Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees  
241 by that date to allocate all costs that are properly assignable to the Contractor, and agrees further that, at  
242 any time after such allocation is made, and subject to satisfaction of the conditions set out in this subdivision

243 of this Article, this Contract shall, at the request of the Contractor, be converted to a contract under  
244 subsection (c)(1) and (d) of Section 9, of the Reclamation Project Act of 1939, subject to applicable  
245 Federal law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting  
246 Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer that,  
247 account being taken of the amount credited to return by the Contractor as provided for under Reclamation  
248 law, the remaining amount of construction costs assignable for ultimate return by the Contractor can  
249 probably be repaid to the United States within the term of a contract under said subsection 9(c)(1) and (d).  
250 If the remaining amount of costs that are properly assignable to the Contractor cannot be determined by  
251 December 31, 2024, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such  
252 a determination could not be made. Further, the Contracting Officer shall make such a determination as  
253 soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the conditions  
254 set out above, conversion to a contract under said subsection 9(c)(1) and (d). In the event such  
255 determination of costs has not been made at a time which allows conversion of this Contract during the term  
256 of this Contract or the Contractor has not requested conversion of this Contract within such term, the parties  
257 shall incorporate in any subsequent renewal contract as described in Articles 2(b) and (c) a provision that  
258 carries forth in substantially identical terms the provisions of this Article 2(d). In the event the Contracting  
259 Officer is able to make a determination of the remaining amount of costs that are properly assignable to the  
260 Contractor before December 31, 2024, the Contracting Officer shall do so at the earliest time he/she has  
261 such ability.

262 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

263           3.     (a)     During each Year, consistent with all applicable State water rights, permits, and  
264 licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the  
265 Contracting Officer shall make available for delivery to the Contractor 30,000 acre-feet of Class 1 Water  
266 and 141,000 acre-feet of Class 2 Water, both for irrigation and M&I purposes. The quantity of Water  
267 Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to  
268 the provisions of Articles 4 and 7 of this Contract.

269                   (b)     Omitted.

270           (c)     The Contractor shall utilize the Project Water in accordance with all applicable legal  
271 requirements.

272           (d)     The Contractor shall make reasonable and beneficial use of all Project Water or  
273 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater banking  
274 programs, surface water storage programs, and other similar programs utilizing Project Water or other water  
275 furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent  
276 with applicable State law and result in use consistent with Reclamation law will be allowed; Provided, That  
277 any direct recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted  
278 pursuant to Article 26 of this Contract; Provided, further, That such Water Conservation Plan demonstrates  
279 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of  
280 Delivered Water is demonstrated to be reasonable for such uses and in compliance with Reclamation law.  
281 Groundwater recharge programs, groundwater banking programs, surface water storage programs, and  
282 other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted

283 outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer,  
284 which approval will be based upon environmental documentation, Project Water rights, and Project  
285 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or  
286 guidelines.

287 (e) The Contractor shall comply with requirements applicable to the Contractor in  
288 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
289 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within the  
290 Contractor's legal authority to implement. The Contractor shall comply with the limitations or requirements  
291 imposed by environmental documentation applicable to the Contractor and within its legal authority to  
292 implement regarding specific activities, including conversion of Irrigation Water to M&I Water. Nothing  
293 herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of  
294 competent jurisdiction with respect to any biological opinion or other environmental documentation referred  
295 to in this Article.

296 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the  
297 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a  
298 determination whether Project Water, or other water available to the Project, can be made available to the  
299 Contractor in addition to the Contract Total under Article 3 of this Contract during the Year without  
300 adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer  
301 will consult with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of  
302 Article 3 of this Contract, if the Contracting Officer determines that Project Water, or other water available

303 to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability  
304 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter  
305 meet with the Contractor and other Project Contractors capable of taking such water to determine the most  
306 equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of  
307 such water, the Contracting Officer shall make such water available to the Contractor in accordance with  
308 applicable statutes, regulations, guidelines, and policies.

309 (g) The Contractor may request permission to reschedule for use during the subsequent  
310 Year some or all of the Water Made Available to the Contractor during the current Year referred to as  
311 “carryover.” The Contractor may request permission to use during the current Year a quantity of Project  
312 Water which may be made available by the United States to the Contractor during the subsequent Year  
313 referred to as “preuse.” The Contracting Officer’s written approval may permit such uses in accordance  
314 with applicable statutes, regulations, guidelines, and policies.

315 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable State  
316 law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the term thereof  
317 and any subsequent renewal contracts, as described in Article 2 of this Contract, during the terms thereof  
318 shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract and any  
319 renewals thereof. Nothing in the preceding sentence shall affect the Contracting Officer’s ability to impose  
320 shortages under Article 11 or subdivision (b) of Article 12 of this Contract or applicable provisions of any  
321 subsequent renewal contracts.

322 (i) Project Water furnished to the Contractor pursuant to this Contract may be

323 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this Contract  
324 upon written approval by the Contracting Officer in accordance with the terms and conditions of such  
325 approval.

326 (j) The Contracting Officer shall make reasonable efforts to protect the water rights and  
327 other rights described in the third (3rd) Explanatory Recital of this Contract and to provide the water  
328 available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in  
329 the capacity and to the extent permitted by law, in administrative proceedings related to the water rights and  
330 other rights described in the third (3rd) Explanatory Recital of this Contract; Provided, however, That the  
331 Contracting Officer retains the right to object to the substance of the Contractor's position in such a  
332 proceeding.

333 (k) Project Water furnished to the Contractor during any month designated in a  
334 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer shall be  
335 deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1 Water is  
336 called for in such schedule for such month and shall be deemed to have been accepted as Class 2 Water to  
337 the extent Class 2 Water is called for in such schedule for such month. If in any month the Contractor  
338 diverts a quantity of water in addition to the total amount of Class 1 Water and Class 2 Water set forth in  
339 the Contractor's approved schedule or revised schedule for such month, such additional diversions shall be  
340 charged first against the Contractor's remaining Class 2 Water supply available in the current Year. To the  
341 extent the Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to  
342 account for such additional diversions, such additional diversions shall be charged against the Contractor's

343 remaining Class 1 Water supply available in the current Year. To the extent the Contractor's remaining  
344 Class 1 Water and Class 2 Water supplies available in the current Year are not sufficient to account for such  
345 additional diversions, such additional diversions shall be charged first against the Contractor's available  
346 Class 2 Water supply and then against the Contractor's available Class 1 Water supply, both for the  
347 following

348 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of this  
349 Contract.

350 (l) If the Contracting Officer determines there is a Project Water supply available at  
351 Friant Dam as the result of an unusually large water supply not otherwise storable for Project purposes or  
352 infrequent and otherwise unmanaged flood flows of short duration, such water will be made available to the  
353 Contractor and others under Section 215 of the RRA pursuant to the priorities specified below if the  
354 Contractor enters into a temporary contract with the United States not to exceed one (1) year for the  
355 delivery of such water or, as otherwise provided for in Federal Reclamation law and associated regulations.  
356 Such water may be identified by the Contractor either (i) as additional water to supplement the supply of  
357 Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon written  
358 notification to the Contracting Officer, as water to be credited against the Contractor's Class 2 Water supply  
359 available pursuant to this Contract. The Contractor shall deliver such water to Eligible Lands, or to Excess  
360 Lands in accordance with this Article. The Contracting Officer shall make water determined to be available  
361 pursuant to this subsection according to the following priorities: first, to long-term contractors for Class 1  
362 Water and/or Class 2 Water within the Friant Division; second, to long-term contractors in the Cross Valley  
363 Division of the Project. The Contracting Officer will consider and seek to accommodate requests from  
364 other parties for Section 215 Water for use within the area identified as the Friant Division service area in  
365 the environmental assessment developed in connection with the execution of this Contract.

366 (m) Nothing in this Contract, nor any action or inaction of the Contractor or Contracting  
367 Officer in connection with the implementation of this Contract, is intended to override, modify, supersede or

368 otherwise interfere with any term or condition of the water rights and other rights referred in the third (3rd)  
369 Explanatory Recital of this Contract.

370 (n) The rights of the Contractor under this Contract are subject to the terms of the  
371 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and  
372 Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the Exchange  
373 Contractors), Contract No. I1r-1144, as amended. The United States agrees that it will not deliver to the  
374 Exchange Contractors thereunder waters of the San Joaquin River unless and until required by the terms of  
375 said contract, and the United States further agrees that it will not voluntarily and knowingly determine itself  
376 unable to deliver to the Exchange Contractors entitled thereto from water that is available or that may  
377 become available to it from the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta  
378 those quantities required to satisfy the obligations of the United States under said Exchange Contract and  
379 under Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145, dated  
380 July 27, 1939).

381 TIME FOR DELIVERY OF WATER

382 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall  
383 announce the Contracting Officer's expected declaration of the Water Made Available. The declaration will  
384 be updated monthly, and more frequently if necessary, based on then-current operational and hydrologic  
385 conditions and a new declaration with changes, if any, to the Water Made Available will be made. The  
386 Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant  
387 supporting information, upon the written request of the Contractor. Concurrently with the declaration of the

388 Water Made Available, the Contracting Officer shall provide the Contractor with the updated Long Term  
389 Historic Average. The declaration of Project operations will be expressed in terms of both Water Made  
390 Available and the Long Term Historic Average.

391 (b) On or before each March 1 and at such other times as necessary, the Contractor  
392 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing  
393 the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to  
394 this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable  
395 means to deliver Project Water according to the approved schedule for the Year commencing on such  
396 March 1.

397 (c) The Contractor shall not schedule Project Water in excess of the quantity of Project  
398 Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area or  
399 to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

400 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the  
401 United States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted  
402 by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s), satisfactory to the  
403 Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested  
404 change(s) is/are to be implemented; Provided, That the total amount of water requested in that schedule or  
405 revision does not exceed the quantities announced by the Contracting Officer pursuant to the provisions of  
406 subdivision (a) of Article 3, and the Contracting Officer determines that there will be sufficient capacity  
407 available in the appropriate Friant Division facilities to deliver the water in accordance with that schedule:

408 Provided, further, That the Contractor shall not schedule the delivery of any water during any period as to  
409 which the Contractor is notified by the Contracting Officer or Operating Non-Federal Entity that Project  
410 facilities required to make deliveries to the Contractor will not be in operation because of scheduled O&M.

411 (e) The Contractor may, during the period from and including November 1 of each  
412 Year through and including the last day of February of that Year, request delivery of any amount of the  
413 Class 1 Water estimated by the Contracting Officer to be made available to it during the following Year.  
414 The Contractor may, during the period from and including January 1 of each Year (or such earlier date as  
415 may be determined by the Contracting Officer) through and including the last day of February of that Year,  
416 request delivery of any amount of Class 2 Water estimated by the Contracting Officer to be made available  
417 to it during the following Year. Such water shall hereinafter be referred to as preuse water. Such request  
418 must be submitted in writing by the Contractor for a specified quantity of preuse and shall be subject to the  
419 approval of the Contracting Officer. Payment for preuse water so requested shall be at the appropriate  
420 rate(s) for the following Year in accordance with Article 7 of this Contract and shall be made in advance of  
421 delivery of any preuse water. The Contracting Officer shall deliver such preuse water in accordance with a  
422 schedule or any revision thereof submitted by the Contractor and approved by the Contracting Officer, to  
423 the extent such water is available and to the extent such deliveries will not interfere with the delivery of  
424 Project Water entitlements to other Friant Division contractors or the physical maintenance of the Project  
425 facilities. The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the  
426 quantities of water that the Contracting Officer would otherwise be obligated to make available to the  
427 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted from the

428 quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in the following  
429 Year shall be specified by the Contractor at the time the preuse water is requested or as revised in its first  
430 schedule for the following Year submitted in accordance with subdivision (b) of this Article, based on the  
431 availability of the following Year water supplies as determined by the Contracting Officer.

432 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

433 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this Contract  
434 shall be delivered to the Contractor at a point or points of delivery either on Project facilities or another  
435 location or locations mutually agreed to in writing by the Contracting Officer and the Contractor.

436 (b) The Contracting Officer, the Operating Non-Federal Entity, or other appropriate  
437 entity shall make all reasonable efforts to maintain sufficient flows and levels of water in the Friant-Kern  
438 Canal to deliver Project Water to the Contractor at specific turnouts established pursuant to subdivision (a)  
439 of this Article.

440 (c) The Contractor shall deliver Irrigation Water in accordance with any applicable land  
441 classification provisions of Federal Reclamation law and the associated regulations. The Contractor shall not  
442 deliver Project Water to land outside the Contractor's Service Area unless approved in advance by the  
443 Contracting Officer.

444 (d) All Water Delivered to the Contractor pursuant to this Contract shall be measured  
445 and recorded with equipment furnished, installed, operated, and maintained by the United States, the  
446 Operating Non-Federal Entity or other appropriate entity as designated by the Contracting Officer  
447 (hereafter "other appropriate entity") at the point or points of delivery established pursuant to subdivision (a)

448 of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or  
449 cause to be investigated by the responsible Operating Non-Federal Entity, the accuracy of such  
450 measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of  
451 time when accurate measurements have not been made, the Contracting Officer shall consult with the  
452 Contractor and the responsible Operating Non-Federal Entity prior to making a final determination of the  
453 quantity delivered for that period of time.

454 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be  
455 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water Delivered to  
456 the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this  
457 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on  
458 account of damage or claim of damage of any nature whatsoever for which there is legal responsibility,  
459 including property damage, personal injury, or death arising out of or connected with the control, carriage,  
460 handling, use, disposal, or distribution of such Project Water beyond such delivery points, except for any  
461 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers,  
462 employees, agents, or assigns, including any responsible Operating Non-Federal Entity, with the intent of  
463 creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or  
464 any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity;  
465 (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including any  
466 responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities  
467 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided, That

468 the Contractor is not the Operating Non-Federal Entity that owned or operated the malfunctioning  
469 facility(ies) from which the damage claim arose.

470 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

471 6. (a) The Contractor established a measurement program satisfactory to the Contracting  
472 Officer, all surface water delivered for irrigation purposes within the Contractor's Service Area is measured  
473 at each agricultural turnout and such water delivered for municipal and industrial purposes is measured at  
474 each municipal and industrial service connection. The water measuring devices or water measuring methods  
475 of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be  
476 responsible for installing, operating, and maintaining and repairing all such measuring devices and  
477 implementing all such water measuring methods at no cost to the United States. The Contractor shall use the  
478 information obtained from such water measuring devices or water measuring methods to ensure its proper  
479 management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to  
480 record water delivered for municipal and industrial purposes by customer class as defined in the  
481 Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein contained,  
482 however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other  
483 revenues authorized by California law. The Contractor shall include a summary of all its annual surface  
484 water deliveries in the annual report described in subdivision (c) of Article 26 of this Contract.

485 (b) To the extent the information has not otherwise been provided, upon execution of  
486 this Contract, the Contractor shall provide to the Contracting Officer a written report describing the  
487 measurement devices or water measuring methods being used or to be used to implement subdivision (a) of

488 this Article and identifying the agricultural turnouts and the municipal and industrial service connections or  
489 alternative measurement programs approved by the Contracting Officer, at which such measurement devices  
490 or water measuring methods are being used, and, if applicable, identifying the locations at which such  
491 devices and/or methods are not yet being used including a time schedule for implementation at such  
492 locations. The Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the  
493 adequacy of, and necessary modifications, if any, of the measuring devices or water measuring methods  
494 identified in the Contractor's report and if the Contracting Officer does not respond in such time, they shall  
495 be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or  
496 methods are inadequate, the parties shall within sixty (60) days following the Contracting Officer's response,  
497 negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring  
498 devices and/or measuring methods as required by the Contracting Officer to ensure compliance with  
499 subdivision (a) of this Article.

500 (c) All new surface water delivery systems installed within the Contractor's Service  
501 Area after the effective date of this Contract shall also comply with the measurement provisions described in  
502 subdivision (a) of this Article.

503 (d) The Contractor shall inform the Contracting Officer and the State of California in  
504 writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's  
505 Service Area during the previous Year.

506 (e) The Contractor shall inform the Contracting Officer and the Operating  
507 Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity of Irrigation  
508 and M&I Water taken during the preceding month.

509 RATES AND METHOD OF PAYMENT FOR WATER

510 7. (a) The Contractor shall pay the United States as provided in this Article for all  
511 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i)  
512 the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing  
513 ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified, or superseded only  
514 through a public notice and comment procedure; (ii) applicable Reclamation law and associated rules and  
515 regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be made by  
516 cash transaction, wire, or any other mechanism as may be agreed to in writing by the Contractor and the  
517 Contracting Officer. The Rates, Charges, and Tiered Pricing Components applicable to the Contractor  
518 upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

519 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and  
520 Tiered Pricing Components as follows:

521 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide  
522 the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of  
523 the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such  
524 estimate. The Contractor shall be allowed not less than two (2) months to review and comment on such  
525 estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the

526 Contractor in writing of the Charges to be in effect during the period  
527 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such  
528 notification shall revise Exhibit "B."

529 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
530 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project Water  
531 for the following Year and the computations and cost allocations upon which those Rates are based. The  
532 Contractor shall be allowed not less than two (2) months to review and comment on such computations and  
533 cost allocations. By December 31 of each Calendar Year, the Contracting Officer shall provide the  
534 Contractor with the final Rates and Tiered Pricing Components to be in effect for the upcoming Year, and  
535 such notification shall revise Exhibit "B."

536 (c) At the time the Contractor submits the initial schedule for the delivery of Project  
537 Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an  
538 advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s)  
539 set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this  
540 Contract during the first two (2) calendar months of the Year. Before the end of the first month and before  
541 the end of each calendar month thereafter, the Contractor shall make an advance payment to the United  
542 States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered  
543 pursuant to this Contract during the second month immediately following. Adjustments between advance  
544 payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the  
545 end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to

546 Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during  
547 any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure  
548 that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the  
549 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water  
550 Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor  
551 unless and until an advance payment at the Rates then in effect for such additional Project Water is made.  
552 Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of  
553 Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no  
554 later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water carried  
555 over under subdivision (f) of Article 3 of this Contract if such water is not delivered by the last day of  
556 February.

557 (d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision  
558 (c) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered  
559 Pricing Component then in effect, before the end of the month following the month of delivery; Provided,  
560 That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to  
561 subdivision (j)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and  
562 M&I Water Delivered as shown in the water delivery report for the subject month prepared by the  
563 Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer.  
564 Such water delivery report shall be the basis for payment of Charges and Tiered Pricing Components by the  
565 Contractor, and shall be provided to the Contractor by the Operating Non-Federal Entity or the Contracting

566 Officer (as applicable) within  
567 five (5) days after the end of the month of delivery. The water delivery report shall be deemed a bill for the  
568 payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for  
569 overpayment or underpayment of Charges shall be made through the adjustment of payments due to the  
570 United States for Charges for the next month. Any amount to be paid for past due payment of Charges and  
571 the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

572 (e) The Contractor shall pay for any Water Delivered under subdivision (d), (f), or (g)  
573 of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable statutes,  
574 associated regulations, any applicable provisions of guidelines or ratesetting policies; Provided, That the  
575 Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall be no more than the  
576 otherwise applicable Rate for Irrigation Water or M&I Water under subdivision (a) of this Article.

577 (f) Payments to be made by the Contractor to the United States under this Contract  
578 may be paid from any revenues available to the Contractor.

579 (g) All revenues received by the United States from the Contractor relating to the  
580 delivery of Project Water or the delivery of non-project water through Project facilities shall be allocated  
581 and applied in accordance with Federal Reclamation law and the associated rules or regulations, and the  
582 then current Project ratesetting policies for M&I Water or Irrigation Water.

583 (h) The Contracting Officer shall keep its accounts pertaining to the administration of the  
584 financial terms and conditions of its long-term contracts, in accordance with applicable Federal standards, so  
585 as to reflect the application of Project costs and revenues. The Contracting Officer shall, each Year upon

586 request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor  
587 expense allocations, the disposition of all Project and Contractor revenues, and a summary of all water  
588 delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to  
589 resolve any discrepancies or disputes relating to accountings, reports, or information.

590 (i) The parties acknowledge and agree that the efficient administration of this Contract  
591 is their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and  
592 procedures used for establishing Rates, Charges, and Tiered Pricing Components, and/or for making and  
593 allocating payments, other than those set forth in this Article may be in the mutual best interest of the parties,  
594 it is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies, and  
595 procedures for any of those purposes while this Contract is in effect without amending this Contract.

596 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water and  
597 Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of the  
598 month following the month of delivery the Contractor shall make an additional payment to the United States  
599 equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the total of the  
600 deliveries of Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the Contract Total, but  
601 less than or equal to ninety (90%) percent of the Contract Total, shall equal the one-half of the difference  
602 between the Rate established under subdivision (a) of Article 7 of this Contract and the Irrigation Full Cost  
603 Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the  
604 total of the deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90%) percent of the  
605 Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of Article 7

606 of this Contract and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is  
607 applicable.

608 (2) Subject to the Contracting Officer's written approval, the Contractor may  
609 request and receive an exemption from such Tiered Pricing Components for Project Water delivered to  
610 produce a crop which the Contracting Officer determines will provide significant and quantifiable habitat  
611 values for waterfowl in fields where the water is used and the crops are produced; Provided, That the  
612 exemption from the Tiered Pricing Components for Irrigation Water shall apply only if such habitat values  
613 can be assured consistent with the purposes of CVPIA through binding agreements executed with or  
614 approved by the Contracting Officer prior to use of such water.

615 (3) For purposes of determining the applicability of the Tiered Pricing  
616 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
617 transfers to others but shall not include Project Water transferred and delivered to the Contractor.

618 (k) For the term of this Contract, Rates under the respective ratesetting policies will be  
619 established to recover only reimbursable "operation and maintenance" (including any deficits) and capital  
620 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and interest,  
621 where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant  
622 Project ratesetting policy. Changes of significance in practices which implement the Contracting Officer's  
623 ratesetting policies will not be implemented until the Contracting Officer has provided the Contractor an  
624 opportunity to discuss the nature, need, and impact of the proposed change.

625 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the

626 Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward or  
627 downward to reflect the changed costs of delivery (if any) of the transferred Project Water to the  
628 transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy. If the  
629 Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project  
630 Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and  
631 Charges for transferred Project Water shall be the Contractor's Rates and Charges unadjusted for ability to  
632 pay.

633 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting Officer  
634 is authorized to adjust determinations of ability to pay every five (5) years.

635 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

636 8. The Contractor and the Contracting Officer concur that, as of the effective date of this  
637 Contract, the Contractor has no non-interest bearing operation and maintenance deficits and shall have no  
638 further liability therefor.

639 SALES, TRANSFERS, OR EXCHANGES OF WATER

640 9. (a) The right to receive Project Water provided for in this Contract may be sold,  
641 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such  
642 sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or  
643 regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take  
644 place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b)  
645 of this Article, and no such sales, transfers, or exchanges shall be approved absent compliance with

646 appropriate environmental documentation including but not limited to the National Environmental Policy Act  
647 and the Endangered Species Act. Such environmental documentation should include, as appropriate, an  
648 analysis of groundwater impacts and economic and social effects, including environmental justice, of the  
649 proposed water transfers on both the transferor and transferee.

650 (b) In order to facilitate efficient water management by means of water transfers of the  
651 type historically carried out among Project Contractors located within the same geographical area and to  
652 allow the Contractor to participate in an accelerated water transfer program during the term of this Contract,  
653 the Contracting Officer shall prepare, as appropriate, necessary environmental documentation including, but  
654 not limited to, the National Environmental Policy Act and the Endangered Species Act analyzing annual  
655 transfers within such geographical areas and the Contracting Officer shall determine whether such transfers  
656 comply with applicable law. Following the completion of the environmental documentation, such transfers  
657 addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but  
658 shall not require prior written approval by the Contracting Officer. Such environmental documentation and  
659 the Contracting Officer's compliance determination shall be reviewed every five (5) years and updated, as  
660 necessary, prior to the expiration of the then existing five (5) -year period. All subsequent environmental  
661 documentation shall include an alternative to evaluate not less than the quantity of Project Water historically  
662 transferred within the same geographical area.

663 (c) For a water transfer to qualify under subdivision (b) of this Article, such water  
664 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for M&I  
665 use, groundwater recharge, groundwater banking, similar groundwater activities, surface water storage, or

666 fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife  
667 refuges, groundwater basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur  
668 between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new  
669 construction or modifications to facilities and be between existing Project Contractors and/or the Contractor  
670 and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and  
671 local or tribal laws and requirements imposed for protection of the environment and Indian Trust Assets, as  
672 defined under Federal law.

673 APPLICATION OF PAYMENTS AND ADJUSTMENTS

674 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
675 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the  
676 Contractor arising out of this Contract then due and payable. Overpayments of more than One Thousand  
677 Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any amount of such  
678 overpayment at the option of the Contractor, may be credited against amounts to become due to the United  
679 States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole  
680 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project  
681 Water supply provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
682 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in  
683 response to the notice to the Contractor that it has finalized the accounts for the Year in which the  
684 overpayment was made.

685 (b) All advances for miscellaneous costs incurred for work requested by the Contractor  
686 pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the work has been  
687 completed. If the advances exceed the actual costs incurred, the difference will be refunded to the  
688 Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the  
689 additional costs pursuant to Article 25 of this Contract.

690 TEMPORARY REDUCTIONS--RETURN FLOWS

691 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the  
692 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or renewals  
693 thereof, providing for water deliveries from the Project, the Contracting Officer shall make all reasonable  
694 efforts to optimize Project Water deliveries to the Contractor as provided in this Contract.

695 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
696 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes  
697 of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part  
698 thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting  
699 Officer or Operating Non-Federal Entity will give the Contractor due notice in advance of such temporary  
700 discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided,  
701 That the United States shall use its best efforts to avoid any discontinuance or reduction in such service.  
702 Upon resumption of service after such reduction or discontinuance, and if requested by the Contractor, the  
703 United States will, if possible,

704 deliver the quantity of Project Water which would have been delivered hereunder in the absence of such  
705 discontinuance or reduction.

706 (c) The United States reserves the right to all seepage and return flow water derived  
707 from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's  
708 Service Area; Provided, That this shall not be construed as claiming for the United States any right as  
709 seepage or return flow to water being used pursuant to this Contract for surface irrigation or underground  
710 storage either being put to reasonable and beneficial use pursuant to this Contract within the Contractor's  
711 Service Area by the Contractor or those claiming by, through, or under the Contractor. For purposes of this  
712 subdivision, groundwater recharge, groundwater banking and all similar groundwater activities will be  
713 deemed to be underground storage.

714 CONSTRAINTS ON THE AVAILABILITY OF WATER

715 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means  
716 to guard against a Condition of Shortage in the quantity of water to be made available to the Contractor  
717 pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage  
718 appears probable, the Contracting Officer will notify the Contractor of said determination as soon as  
719 practicable.

720 (b) If there is a Condition of Shortage because of errors in physical operations of the  
721 Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the  
722 Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 18 of this  
723 Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for

724 any damage, direct or indirect, arising therefrom.

725 (c) The United States shall not execute contracts which together with this Contract, shall  
726 in the aggregate provide for furnishing during the life of this Contract or any renewals hereof Class 1 Water  
727 in excess of 800,000 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year;  
728 Provided, That, subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water  
729 contracts shall not prohibit the United States from entering into temporary contracts of one year or less in  
730 duration for delivery of Project Water to other entities if such water is not necessary to meet the schedules  
731 as may be submitted by all Friant Division long-term water service contractors entitled to receive Class 1  
732 Water and/or Class 2 Water under their water service contracts. Nothing in this subdivision shall limit the  
733 Contracting Officer's ability to take actions that result in the availability of new water supplies to be used for  
734 Project purposes and allocating such new supplies; Provided, That the Contracting Officer shall not take  
735 such actions until after consultation with the Friant Division Project Contractors.

736 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to this or any  
737 other contract for water service heretofore or hereafter entered into any Year unless and until the  
738 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in subdivision (c)  
739 of this Article will be available for delivery in said Year. If the Contracting Officer determines there is or will  
740 be a shortage in any Year in the quantity of Class 1 Water available for delivery, the Contracting Officer  
741 shall apportion the available Class 1 Water among all contractors entitled to receive such water that will be  
742 made available at Friant Dam in accordance with the following:

743 (1) A determination shall be made of the total quantity of Class 1 Water at  
744 Friant Dam which is available for meeting Class 1 Water contractual commitments, the amount so  
745 determined being herein referred to as the available supply.

746 (2) The total available Class 1 supply shall be divided by the Class 1 Water  
747 contractual commitments, the quotient thus obtained being herein referred to as the Class 1 apportionment  
748 coefficient.

749 (3) The total quantity of Class 1 Water under Article 3 of this Contract shall be  
750 multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of Class 1 Water  
751 required to be delivered by the Contracting Officer to the Contractor for the respective Year, but in no  
752 event shall such amount exceed the total quantity of Class 1 Water specified in subdivision (a) of Article 3 of  
753 this Contract.

754 (e) If the Contracting Officer determines there is less than the quantity of Class 2 Water  
755 which the Contractor otherwise would be entitled to receive pursuant to Article 3 of this Contract, the  
756 quantity of Class 2 Water which shall be furnished to the Contractor by the Contracting Officer will be  
757 determined in the manner set forth in paragraphs (1), (2), and (3), of subdivision (d) of this Article  
758 substituting the term "Class 2" for the term "Class 1."

759 (f) In the event that in any Year there is made available to the Contractor, by reason of  
760 any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or any  
761 discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this Contract, less than  
762 the quantity of water which the Contractor otherwise would be entitled to receive hereunder, there shall be

763 made an adjustment on account of the amounts already paid to the Contracting Officer by the Contractor for  
764 Class 1 Water and Class 2 Water for said Year in accordance with Article 10 of this Contract.

765 UNAVOIDABLE GROUNDWATER PERCOLATION

766 13. To the extent applicable, the Contractor shall not be deemed to have delivered Irrigation  
767 Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands are irrigated with  
768 groundwater that reaches the underground strata as an unavoidable result of the delivery of Irrigation Water  
769 by the Contractor to Eligible Lands.

770 RULES AND REGULATIONS

771 14. (a) The parties agree that the delivery of Irrigation Water or use of Federal facilities  
772 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the Reclamation  
773 Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the rules and  
774 regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

775 (b) The terms of this Contract are subject to any enforceable order, judgment and/or  
776 settlement in NRDC v. Patterson, No. CIVS 88-1658-LKK-EM and shall be timely modified as necessary  
777 to effectuate or facilitate any final order, judgment or settlement in said litigation.

778 (c) The parties acknowledge that, as of the effective date of this Contract, active  
779 settlement discussions are underway in NRDC v. Patterson between Friant Division water service  
780 contractors, representatives of the Contracting Officer, and the plaintiffs in NRDC v. Patterson. The mutual  
781 goals of the parties to those discussions are (i) to expeditiously evaluate and implement, on a mutually  
782 acceptable basis, instream and related measures that will restore ecological functions and hydrologic and  
783 geomorphologic processes of the San Joaquin River below Friant Dam to a level that restores and maintains

784 fish populations in good condition, including but not limited to  
785 naturally-reproducing, self-sustaining populations of chinook salmon and (ii) to accomplish these restoration  
786 goals while not adversely impacting the overall sufficiency, reliability and cost of water supplies to Friant  
787 Division water users. The Contractor has been actively participating, and intends to continue to participate  
788 in such settlement discussions. Except as provided in this Contract, this Contract does not add to the  
789 obligations of the parties, if any, relating to the San Joaquin River. This Contract does not limit or detract  
790 from the obligations of the parties, if any, relating to the San Joaquin River.

791 WATER AND AIR POLLUTION CONTROL

792 15. The Contractor, in carrying out this Contract, shall comply with all applicable water and air  
793 pollution laws and regulations of the United States and the State of California, and shall obtain all required  
794 permits or licenses from the appropriate Federal, State, or local authorities.

795 QUALITY OF WATER

796 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this  
797 Contract shall be operated and maintained to enable the United States to deliver Project Water to the  
798 Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August  
799 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or  
800 other existing Federal laws. The United States is under no obligation to construct or furnish water treatment  
801 facilities to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this  
802 Contract. The United States does not warrant the quality of Water Delivered to the Contractor pursuant to  
803 this Contract.

804 (b) The Operation and Maintenance of Project facilities shall be performed in such  
805 manner as is practicable to maintain the quality of raw water made available through such facilities at the  
806 highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall be  
807 responsible for compliance with all State and Federal water quality standards applicable to surface and  
808 subsurface agricultural drainage discharges generated through the use of Federal or Contractor facilities or  
809 Project Water provided by the Contractor within the Contractor's Service Area.

810 WATER ACQUIRED BY THE CONTRACTOR  
811 OTHER THAN FROM THE UNITED STATES

812 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other  
813 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be  
814 simultaneously transported through the same distribution facilities of the Contractor subject to the following:  
815 (i) if the facilities utilized for commingling Irrigation Water and non-project water were constructed without  
816 funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will  
817 be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to  
818 receive Irrigation Water must be established through the certification requirements as specified in the  
819 Acreage Limitation Rules and Regulations (43 CFR  
820 Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be  
821 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to  
822 irrigate such Eligible Lands. The Contractor and the Contracting Officer concur that, as of the effective date  
823 of this Contract, the Contractor has a distribution system that was constructed without the use of federally

824 financed funds. The use of this distribution system is not subject to the provisions of this subdivision of this  
825 Article.

826 (b) Water or water rights now owned or hereafter acquired by the Contractor, other  
827 than from the United States or adverse to the Project or its contractors (i.e., non-project water), may be  
828 stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate  
829 environmental documentation, with the approval of the Contracting Officer and the execution of any contract  
830 determined by the Contracting Officer to be necessary, consistent with the following provisions:

831 (1) The Contractor may introduce non-project water into Project facilities and  
832 deliver said water to lands within the Contractor's Service Area, including Ineligible Lands, subject to  
833 payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate  
834 as determined by the CVP Ratesetting Policy and the RRA, each as amended, modified or superseded from  
835 time to time. In addition, if electrical power is required to pump non-project water through the facilities, the  
836 Contractor shall be responsible for obtaining the necessary power and paying the necessary charges  
837 therefor.

838 (2) Delivery of such non-project water in and through Project facilities shall only  
839 be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as determined by  
840 the Contracting Officer; (ii) reduce the quantity or quality of water available to other Project water service  
841 contractors; (iii) interfere with the delivery of contractual water entitlements to any other Project water  
842 service contractors; or (iv) interfere with the physical maintenance of the Project facilities.

843 (3) Neither the United States nor the Operating Non-Federal Entity shall be

844 responsible for control, care or distribution of the non-project water before it is introduced into or after it is  
845 delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the  
846 United States and the Operating Non-Federal Entity, and their respective officers, agents, and employees,  
847 from any claim for damage to persons or property, direct or indirect, resulting from Contractor's diversion  
848 or extraction of non-project water from any source.

849 (4) Diversion of such non-project water into Project facilities shall be consistent  
850 with all applicable laws, and if involving groundwater, consistent with any groundwater management plan for  
851 the area from which it was extracted.

852 (5) After Project purposes are met, as determined by the Contracting Officer,  
853 the United States and the Contractor shall share priority to utilize the remaining capacity of the facilities  
854 declared to be available by the Contracting Officer for conveyance and transportation of non-project water  
855 prior to any such remaining capacity being made available to non-Project contractors.

856 OPINIONS AND DETERMINATIONS

857 18. (a) Where the terms of this Contract provide for actions to be based upon the opinion  
858 or determination of either party to this Contract, said terms shall not be construed as permitting such action  
859 to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties,  
860 notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and  
861 appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each  
862 opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of  
863 Article 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable

864 under federal law to any opinion or determination implementing a specific provision of federal law embodied  
865 in statute or regulation.

866 (b) The Contracting Officer shall have the right to make determinations necessary to  
867 administer this Contract that are consistent with the provisions of this Contract, the laws of the United States  
868 and of the State of California, and the rules and regulations promulgated by the Secretary of the Interior.  
869 Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

870 COORDINATION AND COOPERATION

871 19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the  
872 Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project  
873 Contractors, in order to improve the operation and management of the Project. The communication,  
874 coordination, and cooperation regarding operations and management shall include, but not be limited to, any  
875 action which will or may materially affect the quantity or quality of Project Water supply, the allocation of  
876 Project Water supply, and Project financial matters including, but not limited to, budget issues. The  
877 communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this  
878 Contract. Each party shall retain exclusive decision making authority for all actions, opinion, and  
879 determinations to be made by the respective party.

880 (b) Within one-hundred twenty (120) days following the effective date of this Contract,  
881 the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet with  
882 interested Project Contractors to develop a mutually agreeable, written Project-wide process, which may be  
883 amended as necessary separate and apart from this Contract. The goal of this process shall be to provide,

884 to the extent practicable, the means of mutual communication and interaction regarding significant decisions  
885 concerning Project operation and management on a  
886 real-time basis.

887 (c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract, it is  
888 the intent of the Secretary to improve water supply reliability. To carry out this intent:

889 (1) The Contracting Officer will, at the request of the Contractor, assist in the  
890 development of integrated resource management plans for the Contractor. Further, the Contracting Officer  
891 will, as appropriate, seek authorizations for implementation of partnerships to improve water supply, water  
892 quality, and reliability.

893 (2) The Secretary will, as appropriate, pursue program and project  
894 implementation and authorization in coordination with Project Contractors to improve the water supply,  
895 water quality, and reliability of the Project for all Project purposes.

896 (3) The Secretary will coordinate with Project Contractors and the State of  
897 California to seek improved water resource management.

898 (4) The Secretary will coordinate actions of agencies within the Department of  
899 the Interior that may impact the availability of water for Project purposes.

900 (5) The Contracting Officer shall periodically, but not less than annually, hold  
901 division level meetings to discuss Project operations, division level water management activities, and other  
902 issues as appropriate.



931 the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff  
932 or termination, rates of payment or other forms of compensation; and selection for training, including  
933 apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants  
934 for employment, notices to be provided by the Contracting Officer setting forth the provisions of this  
935 nondiscrimination clause.

936 (b) The Contractor will, in all solicitations or advertisements for employees placed by or  
937 on behalf of the Contractor, state that all qualified applicants will receive consideration for employment  
938 without discrimination because of race, color, religion, sex, or national origin.

939 (c) The Contractor will send to each labor union or representative of workers with  
940 which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided  
941 by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's  
942 commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies  
943 of the notice in conspicuous places available to employees and applicants for employment.

944 (d) The Contractor will comply with all provisions of Executive Order  
945 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the  
946 Secretary of Labor.

947 (e) The Contractor will furnish all information and reports required by said amended  
948 Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto,  
949 and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of  
950 Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

951 (f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of  
952 this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated,  
953 or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government  
954 contracts in accordance with procedures authorized in said amended Executive Order, and such other  
955 sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation,  
956 or order of the Secretary of Labor, or as otherwise provided by law.

957 (g) The Contractor will include the provisions of paragraphs (a) through (g) in every  
958 subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of  
959 Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be  
960 binding upon each subcontractor or vendor. The Contractor will take such action with respect to any  
961 subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such  
962 provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor  
963 becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such

964 direction, the Contractor may request the United States to enter into such litigation to protect the interests of  
965 the United States.

966 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

967 22. (a) The obligation of the Contractor to pay the United States as provided in this  
968 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be  
969 distributed among the Contractor's water users and notwithstanding the default of individual water users in  
970 their obligations to the Contractor.

971 (b) The payment of charges becoming due hereunder is a condition precedent to  
972 receiving benefits under this Contract. The United States shall not make water available to the Contractor  
973 through Project facilities during any period in which the Contractor may be in arrears in the advance  
974 payment of water rates due the United States. The Contractor shall not furnish water made available  
975 pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates  
976 levied or established by the Contractor.

977 (c) With respect to subdivision (b) of this Article, the Contractor shall have no  
978 obligation to require advance payment for water rates which it levies.

979 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

980 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42  
981 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age  
982 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as  
983 with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior  
984 and/or Bureau of Reclamation.

985 (b) These statutes require that no person in the United States shall, on the grounds of  
986 race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or  
987 be otherwise subjected to discrimination under any program or activity receiving financial assistance from the  
988 Bureau of Reclamation. By executing this Contract, the Contractor agrees to immediately take any  
989 measures necessary to implement this obligation, including permitting officials of the United States to inspect  
990 premises, programs, and documents.

991 (c) The Contractor makes this agreement in consideration of and for the purpose of  
992 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial  
993 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including

994 installment payments after such date on account of arrangements for Federal financial assistance which were  
995 approved before such date. The Contractor recognizes and agrees that such Federal assistance will be  
996 extended in reliance on the representations and agreements made in this Article, and that the United States  
997 reserves the right to seek judicial enforcement thereof.

998 PRIVACY ACT COMPLIANCE

999 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the  
1000 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in  
1001 maintaining Landholder acreage certification and reporting records, required to be submitted to the  
1002 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat.  
1003 1266), and pursuant to 43 CFR 426.18.

1004 (b) With respect to the application and administration of the criminal penalty provisions  
1005 of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining  
1006 the certification and reporting records referenced in (a) above are considered to be employees of the  
1007 Department of the Interior. See 5 U.S.C. 552a(m).

1008 (c) The Contracting Officer or a designated representative shall provide the Contractor  
1009 with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation  
1010 Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31)  
1011 which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's  
1012 certification and reporting records.

1013 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
1014 Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to  
1015 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to  
1016 grant requests by individuals for access to their own records.

1017 (e) The Contractor shall forward promptly to the System Manager each proposed  
1018 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR 2.71;  
1019 notify the requester accordingly of such referral; and provide the System Manager with information and  
1020 records necessary to prepare an appropriate response to the requester. These requirements do not apply to  
1021 individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to  
1022 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

1023 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1024 25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the

1025 Contractor shall pay to the United States, within sixty (60) days after receipt of a bill and detailed statement  
1026 submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the  
1027 United States for work requested by the Contractor associated with this Contract plus indirect costs in  
1028 accordance with applicable Bureau of Reclamation policies and procedures. All such amounts referred to in  
1029 this Article shall not exceed the amount agreed to in writing in advance by the Contractor. This Article shall  
1030 not apply to costs for routine contract administration.

1031 WATER CONSERVATION

1032 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
1033 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be implementing an  
1034 effective water conservation and efficiency program based on the Contractor's water conservation plan that  
1035 has been determined by the Contracting Officer to meet the conservation and efficiency criteria for  
1036 evaluating water conservation plans established under Federal law. The water conservation and efficiency  
1037 program shall contain definite water conservation objectives, appropriate economically feasible water  
1038 conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery  
1039 pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water  
1040 conservation program. In the event the Contractor's water conservation plan or any revised water  
1041 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been  
1042 determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting  
1043 Officer determines are beyond the control of the Contractor, water deliveries shall be made under this  
1044 Contract so long as the Contractor diligently works with the Contracting Officer to obtain such

1045 determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing  
1046 its water conservation and efficiency program in accordance with the time schedules therein.

1047 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3  
1048 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor shall implement  
1049 the Best Management Practices identified by the time frames issued by the California Urban Water  
1050 Conservation Council for such M&I Water unless any such practice is determined by the Contracting  
1051 Officer to be inappropriate for the Contractor.

1052 (c) The Contractor shall submit to the Contracting Officer a report on the status of its  
1053 implementation of the water conservation plan on the reporting dates specified in the then existing  
1054 conservation and efficiency criteria established under Federal law.

1055 (d) At five (5) -year intervals, the Contractor shall revise its water conservation plan to  
1056 reflect the then current conservation and efficiency criteria for evaluating water conservation plans  
1057 established under Federal law and submit such revised water management plan to the Contracting Officer  
1058 for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets  
1059 Reclamation's then current conservation and efficiency criteria for evaluating water conservation plans  
1060 established under Federal law.

1061 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall be  
1062 described in the Contractor's water conservation plan.

1063 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1064 27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract

1065 shall not be applicable to or affect non-project water or water rights now owned or hereafter acquired by  
1066 the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be  
1067 considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or  
1068 curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or  
1069 has available under any other contract pursuant to Federal Reclamation law.

1070 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1071 28. (a) The Operation and Maintenance of a portion of the Project facilities which serve the  
1072 Contractor, and responsibility for funding a portion of the costs of such Operation and Maintenance, have  
1073 been transferred to the Operating Non-Federal Entity by separate agreement between the United States and  
1074 the Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the rights or  
1075 obligations of the Contractor or the United States hereunder.

1076 (b) The Contracting Officer has previously notified the Contractor in writing that the  
1077 Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been  
1078 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the  
1079 Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms  
1080 and conditions of the separate agreement between the United States and the Operating Non-Federal Entity  
1081 described in subdivision (a) of this Article, all rates, charges or assessments of any kind, including any  
1082 assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets or  
1083 establishes for (i) the Operation and Maintenance of the portion of the Project facilities operated and  
1084 maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's share of the

1085 operation, maintenance and replacement costs for physical works and appurtenances associated with the  
1086 Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of  
1087 the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance and  
1088 conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity or such  
1089 successor shall not relieve the Contractor of its obligation to pay directly to the United States the  
1090 Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the extent the  
1091 Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the  
1092 separate agreement identified in subdivision (a) of this Article.

1093 (c) For so long as the Operation and Maintenance of any portion of the Project facilities  
1094 serving the Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1095 Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract  
1096 representing the cost associated with the activity being performed by the Operating Non-Federal Entity or  
1097 its successor.

1098 (d) In the event the Operation and Maintenance of the Project facilities operated and  
1099 maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1100 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a  
1101 revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project  
1102 Water under this Contract representing the Operation and Maintenance costs of the portion of such Project  
1103 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification  
1104 from the Contracting Officer to the contrary, pay the Rates,

1105 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit “B” directly to the United States  
1106 in compliance with Article 7 of this Contract.

1107 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1108 29. The expenditure or advance of any money or the performance of any obligation of the  
1109 United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of  
1110 appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract.  
1111 No liability shall accrue to the United States in case funds are not appropriated or allotted.

1112 BOOKS, RECORDS, AND REPORTS

1113 30. (a) The Contractor shall establish and maintain accounts and other books and records  
1114 pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial  
1115 transactions, water supply data, and Project land and right-of-way agreements; the water users' land-use  
1116 (crop census), land ownership, land-leasing and water use data; and other matters that the Contracting  
1117 Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such  
1118 date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations,  
1119 each party to this Contract shall have the right during office hours to examine and make copies of the other  
1120 party's books and records relating to matters covered by this Contract.

1121 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records,  
1122 or other information shall be requested from the Contractor by the Contracting Officer unless such books,  
1123 records, or information are reasonably related to the administration or performance of this Contract. Any  
1124 such request shall allow the Contractor a reasonable period of time within which to provide the requested  
1125 books, records, or information.

1126 (c) At such time as the Contractor provides information to the Contracting Officer  
1127 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the Operating  
1128 Non-Federal Entity.

1129 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1130 31. (a) The provisions of this Contract shall apply to and bind the successors and assigns of  
1131 the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid  
1132 until approved in writing by the Contracting Officer.

1133 (b) The assignment of any right or interest in this Contract by either party shall not  
1134 interfere with the rights or obligations of the other party to this Contract absent the written concurrence of  
1135 said other party.

1136 (c) The Contracting Officer shall not unreasonably condition or withhold approval of  
1137 any proposed assignment.

1138 SEVERABILITY

1139 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a  
1140 person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or  
1141 other form of organization whose primary function is to represent parties to Project contracts, brings an  
1142 action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in  
1143 this Contract and said person, entity, association, or organization obtains a final court decision holding that  
1144 such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in  
1145 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days  
1146 of the date of such final court decision identify by mutual agreement the provisions in this Contract which  
1147 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s).  
1148 The time periods specified above may be extended by mutual agreement of the parties. Pending the  
1149 completion of the actions designated above, to the extent it can do so without violating any applicable  
1150 provisions of law, the United States shall continue to make the quantities of Project Water specified in this

1151 Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be  
1152 legally invalid or unenforceable in the final court decision.

1153 RESOLUTION OF DISPUTES

1154 33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights  
1155 and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to  
1156 the Contractor commencing any legal action, or the Contracting Officer referring any matter to Department  
1157 of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such  
1158 action; Provided, That such notice shall not be required where a delay in commencing an action would  
1159 prejudice the interests of the party that intends to file suit. During the thirty (30) -day notice period, the  
1160 Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1161 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor  
1162 or the United States may have.

1163 OFFICIALS NOT TO BENEFIT

1164 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1165 Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as  
1166 other water users or landowners.

1167 CHANGES IN CONTRACTOR'S SERVICE AREA

1168 35. (a) While this Contract is in effect, no change may be made in the Contractor's Service  
1169 Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1170 except upon the Contracting Officer's written consent.

1171 (b) Within thirty (30) days of receipt of a request for such a change, the Contracting  
1172 Officer will notify the Contractor of any additional information required by the Contracting Officer for

1173 processing said request, and both parties will meet to establish a mutually agreeable schedule for timely  
1174 completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in  
1175 the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay  
1176 for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which  
1177 the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or  
1178 licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and  
1179 the Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting  
1180 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1181 FEDERAL LAWS

1182 36. By entering into this Contract, the Contractor does not waive its rights to contest the validity  
1183 or application in connection with the performance of the terms and conditions of this Contract of any Federal  
1184 law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this  
1185 Contract unless and until relief from application of such Federal law or regulation to the implementing  
1186 provision of the Contract is granted by a court of competent jurisdiction.

1187 NOTICES

1188 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to  
1189 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area  
1190 Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721, and on behalf  
1191 of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the Tulare  
1192 Irrigation District, PO Box 1920, Tulare, California 93275. The designation of the addressee or the  
1193 address may be changed by notice given in the same manner as provided in this Article for other notices.

1194 CONFIRMATION OF CONTRACT  
1195

1196           38.     The Contractor, after the execution of this Contract, shall promptly seek to secure a decree  
1197 of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The  
1198 Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and  
1199 all pertinent supporting records of the court approving and confirming this Contract, and decreeing and  
1200 adjudging it to be lawful, valid, and binding on the Contractor.

1201 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1202 year first above written.

THE UNITED STATES OF AMERICA

By:           /s/ William H. Luce, Jr.            
Acting Regional Director, Mid-Pacific Region  
Bureau of Reclamation

(SEAL)

TULARE IRRIGATION DISTRICT

By:           /s/ David G. Bixler            
President of the Board of Directors

Attest:

By:           /s/ Gerald C. Hill, Jr.            
Secretary of the Board of Directors  
TULA.WPD